

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No. EB-01-NF-276
Tidewater Communications, Inc.)	NAL/Acct. No. 200232640001
Chesapeake, Virginia)	FRN: 0003-3044-90

MEMORANDUM OPINION AND ORDER

Adopted: March 24, 2003

Released: March 26, 2003

By the Chief, Enforcement Bureau:

I. Introduction

1. In this *Memorandum Opinion and Order* (“*Order*”), we grant Tidewater Communications, Inc.’s (“Tidewater”) petition for reconsideration of a *Forfeiture Order*¹ we issued imposing a \$10,000 forfeiture assessment against Tidewater for willfully violating Section 17.51(a) of the Commission’s Rules (“Rules”).² The noted violation involves Tidewater’s failure to light its Windsor, Virginia antenna structure.³ On June 11, 2002, Tidewater filed a petition for reconsideration of the *Forfeiture Order*. As explained below, we cancel the \$10,000 forfeiture.

II. Background

2. On November 6, 2001, the Commission’s Norfolk, Virginia Resident Agent Office (“Norfolk Office”) received information originating from a Navy pilot’s report that there was an unlit antenna structure in Windsor, Virginia. After confirming this report by visual inspection on the same day, a Resident Agent from the Norfolk Office ascertained that Tidewater was the owner of the antenna structure.

3. On November 16, 2001, the Norfolk Office issued a *Notice of Violation* to Tidewater for the antenna structure lighting violation. Subsequently, on December 12, 2001, the Norfolk Office issued a *Notice of Apparent Liability for Forfeiture* (“NAL”), finding Tidewater apparently liable for a forfeiture in the amount of \$10,000 for willfully violating Section 17.51(a) of the Rules.⁴ On May 13, 2002, we issued a *Forfeiture Order* to Tidewater, which it now challenges.

¹ *Tidewater Communications, Inc.*, 17 FCC Rcd 8586 (Enf. Bur. 2002).

² 47 C.F.R. § 17.51(a).

³ Antenna Structure Registration number 1028287.

⁴ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232640001 (Enf. Bur., Norfolk Office rel. Nov. 16, 2001).

III. Discussion

4. Tidewater does not contest that its antenna structure was unlit. Instead, as it did below, Tidewater contends that its automatic antenna structure light system, which includes an alarm, malfunctioned. Thus, according to Tidewater, its violation was not willful. We rejected this position below for, among other reasons, Tidewater's failure to present any evidence of its antenna structure inspection routine.⁵

5. Now, Tidewater submits a statement from its Chief Engineer, made under the penalty of perjury, regarding its antenna structure inspection routine. According to the Chief Engineer, he was at the antenna structure site two days before the light outage. While performing his weekly maintenance duties, he inspected the tower light extinguishment alarm system and found no malfunctions.

6. Having a more complete record before us, we find that, in this instance, Tidewater acted in good faith. The basis for our decision rests on the Chief Engineer's statement, made under the penalty of perjury, coupled with the report from Tidewater's independent contractor showing that the alarm failure stemmed from a faulty monitor printed circuit board. Furthermore, we concur with Tidewater when it argues that in imposing the forfeiture amount we erroneously found that it did not have a history of overall compliance. The potential blemish on Tidewater's record stems from an Equal Employment Opportunity rule violation,⁶ the substantive basis for which, at a later date, the U.S. Court of Appeals for the D.C. Circuit found unconstitutional.⁷ Consequently, in an unpublished decision, the Chief of the Commission's former Mass Media Bureau (now Media Bureau), rescinded Tidewater's forfeiture for the violation.⁸ Applying the two downward adjustment criteria to this case (good faith and history of overall compliance),⁹ we find sufficient reason to cancel Tidewater's \$10,000 forfeiture.

IV. Ordering Clauses

7. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Act and Sections 1.80(i) and 1.106 of the Rules,¹⁰ Tidewater's petition for reconsideration **IS GRANTED** and the \$10,000 forfeiture is **IS CANCELLED**.

8. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by first class mail and certified mail, return receipt requested, to Tidewater Communications, Inc., 870 Greenbrier Circle, Suite 399, Chesapeake, Virginia, and to its counsel, Gary S. Smithwick, Esq.,

⁵ *Tidewater Communications, Inc.*, 17 FCC Rcd at 8588.

⁶ *Tidewater Communications, Inc.*, 12 FCC Rcd 11,830 (1997), *rescinded by*, *Memorandum Opinion & Order*, File Nos. BR-950530UZ, BRH-950530UT, BRH-950530US (Mass Media Bur. adopted Oct. 20, 1999) (unpublished).

⁷ *Lutheran Church-Missouri Synod v. F.C.C.*, 141 F.3d 344, *reh'g den.*, 154 F.3d 487, *reh'g en banc denied*, 154 F.3d 494 (D.C. Cir. 1998).

⁸ *See supra* n.6.

⁹ *See* 47 C.F.R. § 1.80(b)(4), Note to Paragraph (b)(4): Guidelines for Assessing Forfeitures, *Section II. Adjustment Criteria for Section 503 Forfeitures*.

¹⁰ 47 U.S.C. § 405; 47 C.F.R. §§ 1.80(i), 1.106.

Smithwick & Belendiuk, P.C., 5028 Wisconsin Avenue, N.W., Suite 301, Washington, D.C. 20016.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau